



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 691-00
30 March 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that his naval record be corrected by changing the date of his discharge.

2. The Board, consisting of Mr. Pfeiffer, Mr. Kastner and Mr. Zsalman, reviewed Petitioner's allegations of error and injustice on 28 March 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner was honorably discharged from the Marine Corps on 15 August 1991 because of his failures of selection for promotion. At that time he had completed 12 years, 4 months and 14 days of active service. On 16 August 1991 he was commissioned a CAPT (O-3) in the Marine Corps Reserve. The record shows that he was honorably discharged on 31 December 1993. The reason for the discharge is unknown but it may have occurred because he failed of selection in the Marine Corps Reserve.

d. Petitioner and the Marine Corps Reserve Support Center were unaware of his discharge because he was issued orders on 17

February 1994 for 26 days of active duty for special work (ADSW). He reported for this duty on 22 February 1994 and detached on 18 March 1994. The record shows that he performed several other periods of ADSW in October and November 1993. His anniversary year would have ended on 20 April 1994.

e. Petitioner states that he did not receive his discharge until the summer of 1994. He subsequently was commissioned in the Air National Guard and states that he is now in his 19th qualifying year for retirement. He desires a change in his discharge date until after 19 March 1994 so that he can obtain credit for the 26 day period of ADSW and a qualifying year for retirement.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that an error occurred when Petitioner was issued ADSW orders after his discharge on 31 December 1993 and that he performed the duty with the expectation of receiving retirement credit. The Board also notes that recoupment of his pay for the ADSW period would be required if it is discovered that he was paid after his discharge. Given the circumstances the Board concludes that the date of his discharge should be changed to 20 April 1994. This date will allow credit for the 26 retirement points and a complete qualifying year if he earned 50 retirement points. In reaching its decision the Board notes that the reason for discharge on 31 December 1993 is not specified in the record but concludes that whatever the reason the discharge date should be changed as an exception to policy.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in the discharge date.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged on 20 April 1994 vice the discharge of 31 December 1993 now of record.

b. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and

complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director